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15 IN THE UNITED STATES DISTRICT COURT
16 EASTERN DISTRICT OF CALIFORNIA

17 UNITED STATES OF AMERICA,
18 Plaintiff,
19 v.
20 AMADO ESCOBEDO, JR. and
21 DOROTEA GONZALEZ
22 Defendants.

23 CASE NO. 1:21-CR-00222 ADA-BAM

24 STIPULATION CONTINUING STATUS
25 CONFERENCE AND REGARDING
26 EXCLUDABLE TIME PERIODS UNDER SPEEDY
27 TRIAL ACT; FINDINGS AND ORDER

28 DATE: January 11, 2023

TIME: 1:00 p.m.

COURT: Hon. Barbara A. McAuliffe

17 This case is set for a status conference on January 11, 2023 in front of the Honorable Barbara A.
18 McAuliffe, U.S. Magistrate Court Judge. The parties stipulate and request to continue the status
19 conference to March 29, 2023 at 1:00 p.m. This case involves complex issues and intersecting state and
20 federal cases, and counsel need additional time based in part on state timing, and also to review
21 discovery, conduct additional investigation, and engage in additional discussions with the government
22 before doing so.

23 On May 26, 2021, the Court issued General Order 631, which provided for a reopening of the
24 courthouse in June 2021, recognized the continued public health emergency, continued to authorize
25 video or teleconference court appearances in various cases, and noted the court's continued ability under
26 the Coronavirus Aid, Relief, and Economic Security (CARES) Act (the "Act") to continue trials and
27 other matters, excluding time under the Act. On June 27, 2022, the Court issued General Order 652,
28 which "authorized the use of videoconference and teleconference technology in certain criminal

1 proceedings under the in the Eastern District of California.” This and previous General Orders highlight
2 and were entered to address public health concerns related to COVID-19.

3 Although the General Orders address the district-wide health concern, the Supreme Court has
4 emphasized that the Speedy Trial Act’s end-of-justice provision “counteract[s] substantive
5 openendedness with procedural strictness,” “demand[ing] on-the-record findings” in a particular case.
6 *Zedner v. United States*, 547 U.S. 489, 509 (2006). “[W]ithout on-the-record findings, there can be no
7 exclusion under” § 3161(h)(7)(A). *Id.* at 507. Moreover, any such failure cannot be harmless. *Id.* at
8 509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153 (9th Cir. 2000) (explaining that a
9 judge ordering an ends-of-justice continuance must set forth explicit findings on the record “either orally
10 or in writing”).

11 Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory
12 and inexcusable—General Orders 611, 612, 617, 631 and 652 require specific supplementation. Ends-
13 of-justice continuances are excludable only if “the judge granted such continuance on the basis of his
14 findings that the ends of justice served by taking such action outweigh the best interest of the public and
15 the defendant in a speedy trial.” 18 U.S.C. § 3161(h)(7)(A). Moreover, no such period is excludable
16 unless “the court sets forth, in the record of the case, either orally or in writing, its reason or finding that
17 the ends of justice served by the granting of such continuance outweigh the best interests of the public
18 and the defendant in a speedy trial.” *Id.*

19 The General Orders exclude delay in the “ends of justice.” 18 U.S.C. § 3161(h)(7) (Local Code
20 T4). Although the Speedy Trial Act does not directly address continuances stemming from pandemics,
21 natural disasters, or other emergencies, this Court has discretion to order a continuance in such
22 circumstances. For example, the Ninth Circuit affirmed a two-week ends-of-justice continuance
23 following Mt. St. Helens’ eruption. *Furlow v. United States*, 644 F.2d 764 (9th Cir. 1981). The court
24 recognized that the eruption made it impossible for the trial to proceed. *Id.* at 767-68; *see also United*
25 *States v. Correa*, 182 F. Supp. 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to exclude time following the
26 September 11, 2001 terrorist attacks and the resultant public emergency). The coronavirus is posing a
27 similar, albeit more enduring, barrier to the prompt proceedings mandated by the statutory rules.

28 In light of the societal context created by the foregoing, this Court should consider the following

1 case-specific facts in finding excludable delay appropriate in this particular case under the ends-of-
2 justice exception, § 3161(h)(7) (Local Code T4).¹ If continued, this Court should designate a new date
3 for the status conference. *United States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any
4 pretrial continuance must be “specifically limited in time”).

5 **STIPULATION**

6 Plaintiff United States of America, by and through its counsel of record, and defendants, by and
7 through defendants’ counsel of record, hereby stipulate as follows:

8 1. The parties need additional time to further investigate/explore matters related to resolving
9 the case or setting a trial date.

10 2. By this stipulation, defendants now move to continue the status conference, and to
11 exclude time from January 11, 2023 to March 29, 2023 under Local Code T4.

12 3. The parties agree and stipulate, and request that the Court find the following:

13 a) .The government has represented that the discovery associated with this case
14 includes investigative reports, and related documents in electronic form. All of this discovery
15 has been either produced directly to counsel and/or made available for inspection and copying.
16 The government discovered that there are additional reports it had not yet received from law
17 enforcement. The government has received some additional reports and requested the remainder
18 which it anticipates receiving within the upcoming week and will provide anything discoverable
19 immediately.

20 b) The government does not object to the continuance.

21 c) In addition to the public health concerns cited by the General Orders and
22 declarations of judicial emergency, and presented by the evolving COVID-19 pandemic, an
23 ends-of-justice delay is particularly apt in this case because:

24 • Defendant’s ability to prepare for trial or a plea has been inhibited by the public
25 health emergency;

26
27
28 ¹ The parties note that General Order 612 acknowledges that a district judge may make
“additional findings to support the exclusion” at the judge’s discretion. General Order 612, ¶ 5 (E.D.
Cal. March 18, 2020).

1 • Defendant needs additional time to review discovery, and conduct additional
2 investigation; and
3 • The parties need additional time to investigate/explore matters related to
4 proceeding via plea or trial.
5
6 d) Based on the above-stated findings, the ends of justice served by continuing the
7 case as requested outweigh the interest of the public and the defendant in a trial within the
8 original date prescribed by the Speedy Trial Act.
9 e) For the purpose of computing time under the Speedy Trial Act, 18 U.S.C. § 3161,
10 et seq., within which trial must commence, the time period of January 11, 2023 to March 29,
11 2023, inclusive, is deemed excludable pursuant to 18 U.S.C. § 3161(h)(7)(A), B(iv) [Local Code
12 T4] because it results from a continuance granted by the Court at defendant's request on the basis
13 of the Court's finding that the ends of justice served by taking such action outweigh the best
14 interest of the public and the defendant in a speedy trial.

15 4. Nothing in this stipulation and order shall preclude a finding that other provisions of the
16 Speedy Trial Act dictate that additional time periods are excludable from the period within which a trial
17 must commence.

18 IT IS SO STIPULATED.

19 Dated: January 6, 2023

PHILLIP A. TALBERT
United States Attorney

21 _____
22 /s/ KIMBERLY A. SANCHEZ
23 KIMBERLY A. SANCHEZ
 Assistant United States Attorney

24 Dated: January 6, 2023

25 _____
26 /s/ MONICA BERMUDEZ
27 MONICA BERMUDEZ
 Counsel for Defendant
 Amado Escobedo, Jr.
28 _____
 /s/ PETER JONES
 PETER JONES
 Counsel for Defendant
 Doroteo Gonzalez

Dated: January 6, 2023

ORDER

IT IS SO ORDERED that the status conference is continued from January 11, 2023, to **March 22, 2023, at 1:00 p.m. before Magistrate Judge Barbara A. McAuliffe**. Time is excluded pursuant to 18 U.S.C. § 3161(h)(7)(A), B(iv).

IT IS SO ORDERED.

Dated: January 6, 2023

/s/ Barbara A. McAuliffe

UNITED STATES MAGISTRATE JUDGE